

MAY 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ALFONSO PALACIOS
HERNANDEZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74418

Agency Nos. A95-300-794

A95-300-793

A95-300-792

A95-300-791

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 12, 2008 **

Before: KOZINSKI, Chief Judge, THOMAS and CALLAHAN, Circuit Judges.

Petitioners challenge a Board of Immigration Appeals' ("BIA") order
denying their motion to reopen and reconsider.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We review the denial of motions to reopen and reconsider for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). A review of the administrative record demonstrates that the minor petitioners have presented no evidence that they have a qualifying relative for purposes of cancellation of removal as defined in 8 U.S.C. § 1229b(b)(1)(D). *See Molina-Estrada v. INS*, 293 F.3d 1089, 1093-94 (9th Cir. 2002). The BIA did not abuse its discretion in denying petitioners' motion because the minor petitioners were ineligible for cancellation of removal. Accordingly, respondent's motion for summary disposition is granted as to the minor petitioners because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

As to the adult petitioners' challenge to the denial of their motion to reopen and reconsider, respondent's motion to dismiss is granted because the court lacks jurisdiction to review the Board of Immigration Appeals' denial of a motion to reopen and reconsider for failure to establish a prima facie case of eligibility if a prior adverse discretionary hardship decision was made by the agency. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006).

The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

The motion for stay of voluntary departure, filed after the departure period had expired, is denied. *See Garcia v. Ashcroft*, 368 F.3d 1157 (9th Cir. 2004).

All other pending motions are denied as moot.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.